

TAB

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22201

01-31-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #7:

MAILED

MAR 28 2002

PAT. & T.M. OFFICE

Opposition No. 125,288

Serial No. 75/531,404

MBT Holdings AG; SKW-MBT  
Management, Inc.;  
Chemrex, Inc; and Master  
Builders, Inc.

v.

Defendant's attorney:

Kit M Stetina

Stetina Brunda Garred & Brucker

24221 Calle De La Loiusa

4th Floor

Laguna Hills, CA 92653-7602

American Polymer  
Corporation d/b/a  
Polycoat Products

Opposers, MBT Holdings AG, SKW-MBT Management, Inc, Chemrex, Inc and Master Builders, Inc., filed a notice of opposition to registration of the mark shown in application Serial No. 75/531,404 on **May 1, 2000**, thereby commencing this proceeding. Fed. R. Civ. P. 3 and Trademark Rule 2.106(a). A copy of the pleading is forwarded herewith to applicant's attorney.

Subsequently, as permitted by Fed. R. Civ. P. 15(a) and Trademark Rule 2.107, opposer filed an amended notice of opposition on **July 7, 2000**. A copy of the amended pleading is also forwarded herewith to applicant's attorney.

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that became effective October 9, 1998. See Notice of Final Rulemaking published in the *Official Gazette* on September 29, 1998 at 1214 TMOG 145. Slight corrections to the rules, resulting in a correction notice, were published in the *Official Gazette* on October 20, 1998 at 1215 TMOG 64. A copy of the recent amendments to the Trademark Rules, as

well as the Trademark Trial and Appeal Board Manual of Procedure (TBMP), is available at <http://www.uspto.gov>.

**ANSWER TO THE AMENDED OPPOSITION IS DUE FORTY DAYS** after the mailing date hereof. (See Patent and Trademark Rule 1.7 for expiration dates falling on Saturday, Sunday, or a holiday).

**Discovery and testimony periods are set as follows:**

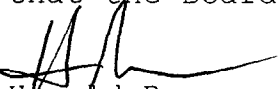
Discovery period to open:	April 17, 2002
Discovery period to close:	October 14, 2002
30-day testimony period for party in position of plaintiff to close:	January 12, 2003
30-day testimony period for party in position of defendant to close:	March 13, 2003
15-day rebuttal testimony period for plaintiff to close:	April 27, 2003

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

**NOTE:** The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). A hard copy of the *Official Gazette* containing this notice is available for a fee from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (Telephone (202) 512-1800). The notice is also available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.



Harold Ross  
Legal Assistant,  
Trademark Trial and  
Appeal Board  
(703) 308-9330, ext. 233

cc: Plaintiff's attorney's  
Joseph G. Curatolo  
Renner, Kenner, Grieve, Bobak, Taylor & Weber  
24500 Center Ridge Road, Suite 280  
Westlake, Ohio 44145

## FILING OPPOSITION/CANCELLATION

Any person (Opposer) may file a Notice of Opposition within 30 days against any mark published under 15 USC 1062(a) in Official Gazette; may oppose in whole or part.<sup>1</sup>

Time for filing Notice may be extended by written request to TTAB. A first extension for not more than 30 days will be granted upon request. Further extensions may be granted for good cause. Extensions aggregating more than 120 days from pub. date not granted unless consented to by applicant or extraordinary circumstances. 37 CFR 2.102(c). Request should be in triplicate. 37 CFR 2.102(d).

Any person (Petitioner) may file a Petition to cancel a registration in whole or in part, but only under conditions set forth in 15 USC 1064.<sup>2</sup> Geographic limitation will be considered by TTAB only in concurrent use proceeding. 37 CFR 2.99(h), 2.133(c).

Opposer/Petitioner is in position of Plaintiff and Applicant/Respondent is Defendant. 37 CFR 2.116(b). Notice/Petition corresponds to complaint in civil action. 37 CFR 2.116(c).

Amendment to pleadings in accord with Rule 15, Fed. Rules of Civil Procedure (FRCP). 37 CFR 2.107, 2.115.

## MAILING PROCEDURES

Certificate of Mailing or Transmission and Express Mail procedures effective for all papers. 37 CFR 1.8, 1.10.

## INSTITUTION OF PROCEEDING; WITHDRAWAL

TTAB examines Notice/Petition for formal requirements and sends notification to Defendant, generally within few weeks of filing date. Duplicate copy of Notice/Petition and Exhibits sent to Defendant. 37 CFR 2.105, 2.113.

Notice/Petition may be withdrawn without prejudice before Defendant files Answer. 37 CFR 2.106(c), 2.114(c). With written consent of Defendant, later withdrawal may be without prejudice.

Defendant may not abandon application or surrender registration without prejudice except with written consent of Plaintiff. 37 CFR 2.135, 2.134.

## ANSWER; MOTIONS

Time for Answer set by TTAB for 40 days from Notification mailing date.<sup>3</sup> Counterclaim should be filed with answer or promptly upon discovery of information supporting Counterclaim. 37 CFR 2.106(b), 2.114(b).

Time for reply to Counterclaim set by TTAB for not less than 30 days from TTAB action mailing date. 37 CFR 2.106(b), 2.114(b).

Motions may be brought before TTAB in writing and with Brief in support. Brief in opposition thereto, 15 days (30 days for summary judgment motion). Briefs limited to 25 pages. Reply Brief, if filed, 15 days, limited to 10 pages. Reconsideration 30 days after decision; Opposition Brief, 15 days. 37 CFR 2.127. Most motions used in Federal practice are applicable.

Motions for Summary Judgment, to Compel, and to Test Sufficiency of Responses to Requests for Admissions, if filed, due before Plaintiff testimony period opens. 37 CFR 2.127(e), 2.120(e), 2.120(h).

## TRIAL DATES

TTAB issues Order setting opening and close of Discovery and Trial dates. Discovery set for period of 180 days; 30-day Pl. Testimony period closes 90 days after close of Discovery period; 30-day Def. Test. period closes 60 days after Pl. Test. period; 15-day Pl. Rebuttal Test. period closes 45 days after Def. Test. period. 37 CFR 2.120(a), 2.121.

In cases where Counterclaim filed, TTAB sets additional time periods for testimony and briefing.

## DISCOVERY PERIOD

Interrogatories, Reqs. for Prod. Of Docs. & Things, and Reqs. for Adm., if served, must be served by last day of Discovery period. Written Responses within 30 days from date of service of Disc. Reqs. FRCP apply except as otherwise provided. 37 CFR 2.116, 2.120(a). Extension of Time to respond to discovery granted upon cause or by stipulation.<sup>4</sup>

Interrogatories limited to proceeding total of 75, counting subparts; additional interrogatories allowed upon motion for good cause or by stipulation. 37 CFR 2.120(d)(1).

Discovery Depositions (noticed and taken within Disc. Period) in District where deponent resides or is employed. 37 CFR 2.120(a), 2.120(b). Either party may request designation of witnesses under FRCP 30(b)(6), 31(a).

## PLAINTIFF'S TRIAL PERIOD

Plaintiff's Testimony-In-Chief. Opens 60 days after Discovery Period closes, and runs for 30 days (refer to Order).

Testimony taken by deposition upon oral examination or upon written questions. 37 CFR 2.123, 2.124.

Plaintiff serves Transcript of testimony and copies of documentary exhibits on adverse party within 30 days after completion of taking testimony. Certified transcript and exhibits filed with TTAB. 37 CFR 2.125.

Notice of Reliance as appropriate on Discovery Deps., Adms. and Int. Answers, with copies of same, due before close of Test. 37 CFR 2.120.<sup>5</sup>

Involved app. or reg. files are in evidence for

relevant and competent purposes. Publications in Circ. or in libraries and official records, may be received if appropriate Notice of Reliance is filed and copies submitted within Test. period. 37 CFR 2.120.

Motion under 37 CFR 2.132, if filed, due after close of Pl.'s Test. period & before opening of Def.'s.

## DEFENDANT'S TRIAL PERIOD

Opens 30 days after close of Pl.'s Test. period. Runs for 30 days.

Test. taken by deposition upon oral examination or upon written questions. 37 CFR 2.123, 2.124.

Notice of Reliance on Discovery responses also due within Test. period, if filed. 37 CFR 2.120.

Notice of Reliance on gen. circ. publ. and official records due within Test. period, if filed. 37 CFR 2.120.

Def. serves Test. transcript on Pl. within 30 days and files certified transcript and exhibits with TTAB. 37 CFR 2.125.

## PLAINTIFF'S REBUTTAL PERIOD

Rebuttal Test. period for Pl. opens 30 days after close of Def.'s Test. period and runs for 15 days.

Pl. may file Notice of Reliance under 37 CFR 2.120, 2.122, with matter relied on, and take Test. to rebut Def. Test. and other evidence.

Pl. serves and files Transcript of Rebuttal Test. and exhibits in accordance with 37 CFR 2.125.

## BRIEFS; ORAL HEARING

Pl. Brief due 60 days after Rebuttal period closing.

Def. Brief, if filed, due 30 days after Pl. Brief due.

Pl. Reply Brief, if filed, due 15 days after Def. Brief due. 37 CFR 2.128.

Separate Request for Oral Hearing, if filed, due no later than 10 days after Reply Brief due. 37 CFR 2.129.

TTAB Notice of Oral Hearing sent to all parties.

Oral Hearing before panel of at least three TTAB judges. 30 minutes for each party. 37 CFR 2.129.

## DECISION; RECONSIDERATION; APPEAL

TTAB Deliberation. Writing of Opinion and Dec. in due course.

Request for rehearing, reconsideration or modification, if filed, due within one month. Brief in opposition within 15 days. 37 CFR 2.129(c).

Any Appeal from TTAB Decision due within two months of Decision or two months after denial of: for recon. See especially 37 CFR 2.129(d).

**NOTE:** Footnotes and TTAB addresses and telephone number appear on the back of this sheet.

**FOOTNOTES**

- (1) Opposer may be any legal entity including a corporation. Opposer must believe that opposer would be **damaged** by registration of the mark and state the reasons. 15 USC 1063 and 37 CFR 2.101. Notice of Opposition need not be verified. \$200 required fee for each class for each person opposing. 37 CFR 2.6, 2.101(b). May be signed by attorney. 37 CFR 2.101(b). Duplicate copy including exhibits required. Order status and title copies of pleaded registrations in advance and attach to Notice/Petition or introduce as evidence during Testimony-In-Chief period. 37 CFR 2.122.
- (2) Action, grounds and requirements (Footnote 1) for initiation of Cancellation proceeding are similar to those for an Opposition proceeding and are covered in 15 USC 1064, 1092 and 37 CFR 2.111, 2.112. \$200 required fee per class, per person. Duplicate copy required.
- (3) Except Notice/Petition, each paper must be served on opponent. Statement of service (date and manner) is required. Period to respond to Motions and Discovery Requests is extended 5 days when service is by first-class mail, "Express Mail," or overnight courier. 37 CFR 2.119. Action due on weekend or D.C. holiday can be taken on next business day. 37 CFR 1.7.
- (4) Resetting of time to respond to Discovery Request does not result in extension of Discovery period and subsequent testimony periods unless requested. 37 CFR 2.120(a). All consented extensions of time should be filed in triplicate and list specific dates for all subsequent periods affected.
- (5) Except for 37 CFR 2.122(e) documents, documents produced in response to Requests for Production cannot be made of record by Notice of Reliance alone. 37 CFR 2.120(j)(ii).
- (6) Briefs should be typewritten or printed, double-spaced, in at least pica or eleven-point type, on letter paper (8½ x 11). Three copies of briefs required. Alphabetical index of cases required. Length limit of 55 pages, including table of contents, index of cases, description of record, statement of issues, recitation of facts, argument, and summary. Reply brief 25 pages total. 37 CFR 2.128(b).

**ADDRESSES AND TELEPHONE**

All papers not requiring a fee should be mailed to:

Box TTAB No Fee  
Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

**NOTE:** For papers with fee, use "Box TTAB Fee"

**TTAB Office Location and Telephone Number**

2900 Crystal Drive  
South Tower, Suite 9B40  
Arlington, Virginia 22202-3513

Telephone: (703) 308-9300

The Trademark Trial and Appeal Board will mail correspondence to only one address for each party.

If a party is located in the U.S., correspondence will be sent to the party's own address, unless (1) papers filed with the Board are filed by a party's attorney, (2) a written power of attorney is filed, (3) a written authorization of some other person entitled to be recognized is filed, or (4) the party requests in writing that correspondence be sent to another address. In these situations, correspondence will be sent, respectively, to (1) the attorney filing papers, (2) the attorney named in the power of attorney, (3) the other person designated in the written authorization, or (4) the other address specified by the party.

When one attorney or other authorized representative makes an appearance on behalf of a party, his address is noted on the proceeding file as the correspondence address. If a second attorney or other authorized representative makes an appearance on behalf of the party, and requests that correspondence be directed to him, the correspondence address on the proceeding file will be changed, and future correspondence will be sent to the second attorney or other authorized representative, rather than to the first one. If the second attorney or other authorized representative does not request that correspondence be sent to him, the Board will continue to send correspondence to the first attorney or authorized representative.

If a power of attorney from a party to one attorney has been filed, and thereafter another attorney or authorized representative makes an appearance on behalf of the party and asks that correspondence be sent to him, the second attorney or authorized representative will be required to submit authorization, from the party or from the first attorney, for the requested change in correspondence address.

If a power of attorney from a party to one attorney has been filed, and thereafter a power of attorney from the party to another attorney is filed, the second power of attorney will be construed as a written request to change the correspondence address from the first attorney to the second one, even if there is no revocation of the first power, unless the party or the first attorney directs otherwise. Likewise, if an attorney makes an appearance on behalf of a party, and thereafter the party files a written power of attorney to another attorney, the Board will send subsequent correspondence to the appointed attorney.

If a power of attorney from a party to one attorney has been filed, and thereafter that attorney files an "associated power of attorney" to another attorney, the correspondence address will remain unchanged, and the Board will continue to send correspondence to the first attorney, unless the first attorney or the party directs otherwise.

In the case of a party whose application is the subject of a Board proceeding, any appearance or power of attorney (or designation of other authorized representative) of record in the application file at the time of the commencement of the Board proceeding is considered to be effective for purposes of the proceeding, and correspondence will be sent initially to that address. Thereafter, the correspondence address may be changed as described in Trademark Rule 2.18.

In the case of a party whose registration is the subject of a Board proceeding, any representative which may be of record in the registration file at the time of the commencement of the Board proceeding is not considered to be effective for purposes of the Board proceeding. Rather, correspondence is sent to the registrant itself unless and until another correspondence address is established in the manner described in Trademark Rule 2.18.

## NOTICE CONCERNING ALTERNATIVE DISPUTE RESOLUTION (ADR)

The Trademark Trial and Appeal Board encourages you to consider alternative dispute resolution as a means of settling the issues raised in this opposition or cancellation proceeding. Although more than 95% of Board proceedings are decided prior to trial (by settlement or by entry of pre-trial judgment), alternative dispute resolution techniques might produce an earlier, mutually agreeable resolution of your dispute or might, at least, narrow the scope of discovery or the issues for trial. In either case, alternative dispute resolution might save you time and money.

Many non-profit organizations, both inside and outside the intellectual property field, offer alternative dispute resolution services. Listed below are the names and addresses of organizations that have indicated that they can make arrangements for alternative dispute resolution. The listings are given for your convenience; the Board does not sponsor nor endorse any particular organization's alternative dispute resolution services.

CPR Institute for Dispute Resolution—INTA 366 Madison Avenue New York, New York 10017 Telephone: (212) 949-6490 Fax: (212) 949-8859
American Intellectual Property Law Association (AIPLA) 2001 Jefferson Davis Highway Suite 203 Arlington, Virginia 22202 Telephone: (703) 415-0780 Fax: (703) 415-0786
American Arbitration Association (AAA) Headquarters 140 West 51 <sup>st</sup> Street New York, New York 10020-1203 Telephone: (212) 484-3266 Fax: (212) 307-4387

Finally, if the parties consider using alternative dispute resolution in this proceeding, the Board would like to know; and if the parties actually engage in alternative dispute resolution, the Board would be interested to learn what mechanism (e.g., arbitration, mediation, etc.) was used and with what general result. Such a statement from the parties is not required but would be helpful to the Board in assessing the value of alternative dispute resolution in Trademark Trial and Appeal Board proceedings.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of:      Application Serial No.: 75/531,404  
                                  Filed on: August 5, 1998  
                                  For the mark: POLY-U-CRETE  
                                  Published in the *Official Gazette* (Trademarks) on: February 1, 2000

MBT HOLDING AG;  
SKW-MBT MANAGEMENT, INC.;  
CHEMREX, INC.; and  
MASTER BUILDERS, INC.

## Opposers

V.

AMERICAN POLYMER CORPORATION  
DBA POLYCOAT PRODUCTS

**Applicant**

Opposition No. \_\_\_\_\_



07-07-2000

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #70

**BOX TTAB FEE**  
Assistant Commissioner of Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513

## FIRST AMENDED NOTICE OF OPPOSITION

Dear Sir:

MBT HOLDING AG, a corporation organized and doing business under the laws of the Country of Switzerland, having a place of business at Vulkanstrasse 110, CH-8048, Zürich Switzerland; SKW-MBT Management, Inc., a corporation duly organized and existing under the laws of the State of Delaware, having its principal place of business at 23700 Chagrin Blvd., Cleveland, Ohio; ChemRex, Inc. a corporation duly organized and existing under the laws of the State of Delaware, having its principal place of business at 889 Valley Park Drive, Shakopee, Minnesota; and Master Builders, Inc., a corporation duly organized and existing under the laws of the State of Delaware, having its principal place of business at 23700 Chagrin



6. Opposer MBT Holding AG is the current owner by valid assignment. The assignment for Reg. No. 1,030,416 was submitted for recordation on May 1, 2000, and the assignment for Reg. No. 1,067,206 is being submitted for recordation on even date.
7. Upon information and belief, Applicant has been using the mark POLY-U-CRETE allegedly only since August 1997, and has been using the mark POLY-U-CRETE in connection with mortars in interstate commerce allegedly only since August 1997.
8. An Opposer, or its predecessor in interest, has used the valid and existing United States Federal trademark registrations for the marks UCRETE, listed in paragraph 5 above, in connection with the stated goods since at least the date of registration, which is before Applicant's first use of the mark POLY-U-CRETE and first use of the mark POLY-U-CRETE in commerce.
9. The use of the marks UCRETE, listed in Paragraph 5 above, by an Opposer or a predecessor in interest in connection with the goods identified in Paragraph 5 above, has been valid and continuous since registration and has not been abandoned.
10. By its extensive advertisement and wide distribution of goods under the marks UCRETE, listed in paragraph 5 above, Opposers, or a predecessor in interest, have developed exceedingly valuable goodwill and consumer recognition throughout the United States with respect to the marks UCRETE, listed in paragraph 5 above, in relation to the goods listed for the marks UCRETE in Paragraph 5 above.
11. Opposers have spent significant time, effort, and money advertising and otherwise promoting the sale of their goods in interstate commerce under the marks UCRETE, listed in paragraph 5 above.
12. The registered marks UCRETE, listed in paragraph 5 above, are highly distinctive and are well known for the goods of Opposers.

U.S. Patent & TMO for TM Mail Rcpt Dt. #34

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of:      Application Serial No.: 75/531,404  
                                  Filed on: August 5, 1998  
                                  For the mark: POLY-U-CRETE  
                                  Published in the *Official Gazette* (Trademarks) on: February 1, 2000

MBT HOLDING AG; )  
SKW-MBT MANAGEMENT, INC.; )  
CHEMREX, INC.; and )  
MASTER BUILDERS, INC. )

## Opposers

y.

AMERICAN POLYMER CORPORATION  
DBA POLYCOAT PRODUCTS

**Applicant**

Opposition No.

**BOX TTAB FEE**  
Assistant Commissioner of Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513

## NOTICE OF OPPOSITION

Dear Sir:

MBT HOLDING AG, a corporation organized and doing business under the laws of the Country of Switzerland, having a place of business at Vulkanstrasse 110, CH-8048, Zürich Switzerland; SKW-MBT Management, Inc., a corporation duly organized and existing under the laws of the State of Delaware, having its principal place of business at 23700 Chagrin Blvd., Cleveland, Ohio; ChemRex, Inc. a corporation duly organized and existing under the laws of the State of Delaware, having its principal place of business at 889 Valley Park Drive, Shakopee, Minnesota; and Master Builders, Inc., a corporation duly organized and existing under the laws of the State of Delaware, having its principal place of business at 23700 Chagrin

Blvd., Cleveland, Ohio (hereinafter called Opposers), believes that they will be damaged by the registration of the mark shown in Application Serial No. 75/531,404 and hereby oppose the same.

The grounds for opposition are as follows:

1. Opposers, MBT Holding AG, SKW-MBT Management, Inc., ChemRex, Inc., and Master Builders, Inc. are subsidiaries of SKW Trostberg AG, a corporation duly organized and existing under the laws of the Country of Germany.
2. Opposer MBT Holding AG was organized and functions as the legal owner of certain intellectual property rights of SKW Trostberg AG and its subsidiaries.
3. Upon information and belief, American Polymer Corporation DBA Polycoat Products (hereinafter called Applicant) is a corporation duly organized and existing under the laws of the State of California, having its principal place of business at 14722 Spring Avenue, Santa Fe Springs, California 90670-5108.
4. Applicant has pending an application, Application Serial No. 75/531,404, to register the mark POLY-U-CRETE as a trademark for polymer coating preparations for use on floors in International Class 2.
5. Opposers, are the current owner, licensee, and licensed users of the following valid and existing United States Federal trademark registration:

<u>Trademark</u>	<u>Reg. No.</u>	<u>Registration Date</u>	<u>Goods</u>
UCRETE	1,030,416	January 20, 1976	Chemical products - namely, polymers for use in the manufacture of polymeric concrete.

A true copy of the above listed United States trademark registration is attached hereto as Exhibit 1.

6. Opposer MBT Holding AG is the current owner by valid assignment, which is being submitted for recordation on even date.
7. Upon information and belief, Applicant has been using the mark POLY-U-CRETE allegedly only since August 1997, and has been using the mark POLY-U-CRETE in connection with mortars in interstate commerce allegedly only since August 1997.
8. An Opposer, or its predecessor in interest, has used the valid and existing United States Federal trademark registration for the mark UCRETE in connection with the stated goods since at least the date of registration, which is before Applicant's first use of the mark POLY-U-CRETE and first use of the mark POLY-U-CRETE in commerce.
9. The use of the mark UCRETE, listed in Paragraph 5 above, by an Opposer or a predecessor in interest in connection with the goods identified in Paragraph 5 above, has been valid and continuous since registration and has not been abandoned.
10. By its extensive advertisement and wide distribution of goods under the mark UCRETE, Opposers, or a predecessor in interest, have developed exceedingly valuable goodwill and consumer recognition throughout the United States with respect to the mark UCRETE in relation to the goods listed for the mark UCRETE in Paragraph 5 above.
11. Opposers have spent significant time, effort, and money advertising and otherwise promoting the sale of their goods in interstate commerce under the mark UCRETE.
12. The registered mark UCRETE is highly distinctive and is well known for the goods of Opposers.
13. Applicant's mark POLY-U-CRETE and Opposers' registered mark UCRETE are essentially identical with essentially the same spelling, pronunciation, and commercial impression — only differing by the prefix "poly".

14. Upon information and belief, the respective goods of Opposers are substantially the same as Applicant's goods, and would travel and be promoted by the same marketing methods and through the same channels of trade, for sale to and use by the same class of purchasers as would Applicant's goods.
15. Upon information and belief, Applicant's use of the mark POLY-U-CRETE for its goods is such that it will create or is likely to create confusion, deception, or mistake among purchasers as to the source of Applicant's goods.
16. Upon information and belief, the Applicant's use of the mark POLY-U-CRETE is such that purchasers will be misled and deceived into mistakenly believing that Applicant's goods are approved or sponsored by Opposers, which they are not.
17. Upon information and belief, the registration of Application Serial No. 75/531,404 will work to Opposers' disadvantage in that the consumer recognition and goodwill associated with Opposers' mark will likely be extended to Applicant's mark without Opposers' consent, thereby benefiting Applicant rather than Opposers.
18. Upon information and belief, Applicant's use of the mark POLY-U-CRETE will interfere or is likely to interfere with or embarrass Opposers in its business reputation and the reputation of the products for which they use their registered trademark listed in Paragraph 5, above.

WHEREFORE, Opposers believe that the registration of Application Serial No. 75/531,404 and Applicant's use of the mark POLY-U-CRETE, will result in damage to Opposers, and pray that the registration of Application Serial No. 75/531,404 be denied.

Bldg/Room

PATENT AND TRADEMARK OFFICE

DC 20231

3LE RETURN IN TEN DAYS

E USE, \$300

AN EQUAL OPPORTUNITY EMPLOYER

CARRINGTON

91/125288 510

KIT M. STETINA  
STETINA BRUNDA GARRED & BRUCKER  
24221 CALLE DE LA LOUISA  
4TH FLOOR  
LAGUNA HILLS, CA 92653-7602

RE: AMERICAN POLYMER CORPORATION D/ ETC